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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/078,625	02/19/2002	Philippe Moquin	SMB 2 0962	5120
7590	12/21/2004		EXAMINER	
James W. McKee Fay, Sharpe, Fagan Minnich & McKee, LLP 1100 Superior Avenue, 7th Floor Cleveland, OH 44114-2518			ENSEY, BRIAN	
			ART UNIT	PAPER NUMBER
			2643	
DATE MAILED: 12/21/2004				

Please find below and/or attached an Office communication concerning this application or proceeding.

9/15

Office Action Summary	Application No.	Applicant(s)
	10/078,625	MOQUIN ET AL.
	Examiner	Art Unit
	Brian Ensey	2643

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on ____.
- 2a) This action is **FINAL**. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 1-3 and 6-8 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) Claim(s) 6-8 is/are allowed.
- 6) Claim(s) 1-3 is/are rejected.
- 7) Claim(s) ____ is/are objected to.
- 8) Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on ____ is/are: a) accepted or b) objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. ____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) <input type="checkbox"/> Notice of References Cited (PTO-892)	4) <input type="checkbox"/> Interview Summary (PTO-413)
2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)	Paper No(s)/Mail Date: ____
3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date <u>8/2/04 + 10/18/04</u> .	5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)
	6) <input type="checkbox"/> Other: ____

DETAILED ACTION

Double Patenting

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 1-3 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1,2 and 5 of U.S. Patent No. 6,744,900. Although the conflicting claims are not identical, they are not patentably distinct from each other because they discloses a gasket for use with a microphone and a tube for directing the sound to the microphone with an acoustic filter consisting of a plurality of small holes extending through a relatively thin wall to modify the acoustic response of the microphone. It would have been obvious to one of ordinary skill in the art that the perforated membrane of the current application and the perforated thin wall of the aforementioned patent provide similar acoustic modification of the acoustical response of the microphone.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

Claims 1-3 are rejected under 35 U.S.C. 103(a) as being unpatentable over Barnes, U.K. Patent Application GB 2,064,263 A.

Regarding claim 1, Barnes discloses a gasket (4) for use with a microphone (3), comprising: at least one tube (42) for receiving said microphone and for directing sound thereto, said tube giving rise to acoustical response for said microphone; and a perforated membrane (44) within said tube for modifying the acoustical response of said microphone (See Figs. 1 and 2 and lines 53-129). Barnes does not expressly disclose said membrane is integrally molded within the tube. However, Figure 1 clearly illustrates a one piece construction of said tube and membrane and it would have been obvious to one of ordinary skill in the art at the time of the invention to mold such one piece construction for low cost and efficient mass production.

Regarding claim 2, Barnes further discloses said perforated membrane is located adjacent said microphone (See Figs. 1 and 2).

Regarding claim 3, Barnes does not expressly disclose a plurality of holes distributed evenly across said membrane. However, multiple hole membranes are well-known in the art and membranes with no holes, single holes or multiple holes all provide varying acoustical responses. It would have been obvious to one of ordinary skill in the art at the time of the invention to provide multiple holes for varying the acoustical response of the membrane.

Allowable Subject Matter

Claims 6-8 are allowed.

Response to Arguments

Applicant's arguments filed 08/05/04 have been fully considered but they are not persuasive. The examiner does not agree that element (44) of Barnes (GB 2,084,263) does not constitute a membrane. Barnes specifically notes that element 44 forms a web with a central aperture between a circular recess (43) and a microphone (3) which modifies the acoustical response of the incoming sound by causing a rapid fall in acoustic response above 3.5 KHz. Further, Barnes does not limit the specific thickness of the web as disclosed.

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO

MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Brian Ensey whose telephone number is 703-305-7363. The examiner can normally be reached on Mon-Fri: 8:00 - 4:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Curtis Kuntz can be reached on 703-305-4708. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Any response to this action should be mailed to:

Commissioner of Patents and Trademarks
Washington, D.C. 20231

Or faxed to:

(703) 872-9306, for formal communications intended for entry and for informal or draft communications, please label "PROPOSED" or "DRAFT".
Hand-delivered responses should be brought to: 220 South 20th Street, Crystal Plaza Two,
Lobby, Room 1B03, Arlington, VA 22202

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

BKE
December 8,2004



CURTIS KUNTZ
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